

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

NEAL HYNEMAN, on behalf of himself
and all others similarly situated,

CIVIL ACTION NO.
2:21-cv-02427-TLP-cg

Plaintiff
Versus

AUTOZONE, INC.,

Defendant

MOTION TO DISMISS CLASS ACTION COMPLAINT

Defendant AutoZoners, LLC (“AutoZone”), incorrectly referred to in the Class Action Complaint as AutoZone, Inc., by and through undersigned counsel, pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully moves this Honorable Court to dismiss Plaintiff’s frequency of wage payment claim pertaining to an alleged violation of New York Labor Law Article 6, § 191.

Dismissal of Plaintiff’s claims is warranted because the Complaint is essentially a copycat of another putative class action complaint filed six months earlier in the United States District Court for the Eastern District of New York, *Keith Confusione and Randolph Brannigan, on behalf of themselves and all others similarly situated v. AutoZoners, LLC*, Case no.: 2:21-cv-00001-JMA-AYS, involving similar, if not identical, parties and issues; therefore, pursuant to the “first to file” rule, Plaintiff’s Complaint should be dismissed. In the alternative, Plaintiff’s Complaint should be dismissed because his § 191 claims fails as a matter of law given that the New York Labor Law does not provide a private right of action for wages that are fully paid albeit not on a weekly basis. Thus, Plaintiff’s claims should be dismissed, with prejudice, at Plaintiff’s cost.

Dated: August 17, 2021

Respectfully submitted,

/s/ Christopher M. Myatt

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Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on this 17th day of August, 2021, a true and correct copy of the foregoing pleading was filed electronically with the Clerk of Court of the United States District Court for the Western District of Tennessee by using the CM/ECF system.

/s/ Christopher M. Myatt
Christopher Myatt